

## DEPARTMENT OF JUSTICE

## Federal Prison Industries, Inc.

## 28 CFR Part 345

[BOP-1062-F]

RIN 1120-AA57

## Federal Prison Industries (FPI) Inmate Work Programs: Eligibility

**AGENCY:** Federal Prison Industries, Inc., Bureau of Prisons, Justice.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons is amending its regulations to limit from consideration for Federal Prison Industries (FPI) work assignments pretrial inmates or, with certain exceptions, any inmate currently under an order for deportation, exclusion, or removal. In addition, any pretrial inmate or, with certain exceptions, any inmate in an FPI work assignment currently under an order for deportation, exclusion, or removal shall be removed immediately and shall be reassigned to a non-FPI work assignment for which the inmate is eligible. This amendment is intended to conform with revised regulations of the Immigration and Naturalization Service and to help ensure that FPI work assignments ordinarily will be allocated to sentenced inmates who will be returning to the community within, rather than outside, the United States upon release.

**DATES:** Effective July 15, 1999; all Bureau institutions are to be in compliance by October 13, 1999.

**ADDRESSES:** Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is amending its regulations on Federal Prison Industries (FPI) inmate work assignments (28 CFR part 345). A proposed rule on this subject was published in the **Federal Register** on April 30, 1997 (62 FR 23536).

Pursuant to statutory authority, it is the policy of the Federal Government that convicted inmates confined in Federal prisons, jails, and other detention facilities shall work (104 Stat. 4914). FPI is further authorized by statute to provide work assignments for inmates (18 U.S.C. 4122). These work assignments are designed, in part, to

allow inmates the opportunity to acquire the knowledge, skills, and work habits which will be useful when released from the institution (see 28 CFR 345.10).

In order to ensure that sentenced inmates to be released to the community in the United States will be afforded maximum opportunity to work in FPI assignments, FPI had proposed to restrict from consideration for FPI assignment pretrial inmates and inmates currently under an order for deportation or removal, and to remove from an FPI assignment any pretrial inmate or inmate currently under a deportation or removal order. In keeping with the policy that convicted inmates shall work, any inmate so removed would be reassigned to a non-FPI work assignment for which the inmate is eligible. While a pretrial inmate is not required to work in any assignment other than housekeeping tasks in the inmate's own cell and in the community living area, the pretrial inmate may be eligible for an institutional assignment if the inmate signs a waiver of his or her right not to work (see 28 CFR 551.106).

Section 345.11 accordingly was proposed to be amended by adding a new paragraph (g) to reference the definition of "pretrial inmate." Sections 345.35 and 345.42 were proposed to be amended to incorporate the above mentioned assignment and dismissal procedures.

The Bureau received twenty-one comments on the proposed rulemaking. All of the comments were opposed in total or in part to adopting the proposed amendment as final. None of the comments explicitly addressed applicability of the restriction to pretrial inmates. A summary of the comments and the agency response follows.

Several of the commenters claimed that the proposed amendments were discriminatory. Two commenters stated that the Bureau was contradicting its statement in § 345.35(a) that Federal Prison Industries does not discriminate on the basis of race, color, religion, ethnic origin, age, or disability (one of the two more specifically cited ethnic origin). Another commenter stated that the proposed regulations would make foreign inmates feel like second-class inmates. Similarly, another commenter stated that the proposed regulations would result in unequal treatment and another commenter stated that the same rules should apply to all inmates.

The Bureau, in response, notes that the proposed restriction was to be applicable to pretrial inmates and to inmates under an order for deportation or removal. The restriction is therefore not based directly upon ethnic origin,

for example, but upon an administrative status pertaining to deportation or removal and upon the correctional management needs of sentenced inmates. The purpose of the restriction, as stated in the published proposed rule, is to ensure that sentenced inmates to be released to the community in the United States will be afforded opportunities to work in FPI assignments. As stated in § 345.10, FPI work assignments are designed, in part, to allow inmates the opportunity to acquire the knowledge, skills, and work habits which will be useful when released from the institution. FPI work assignments provide inmates with higher remuneration than do institution work assignments. There are more inmates in the Federal system than there are available FPI assignments. Consequently, FPI assignments are coveted positions which are filled from waiting lists of eligible inmates. Because FPI assignments enhance the ability of inmates to work successfully in the domestic marketplace and thereby lowers the risk of recidivism, allocating the assignments to those inmates who will likely be accessible to the domestic marketplace after their release is a proper exercise of the Bureau's discretion in correctional management.

Subsequent to consultation with the Immigration and Naturalization Service (INS), the restriction has been adjusted in conformance with revised INS regulations (see 8 CFR 241.5(c)) and practices to include orders for exclusion, to provide for exceptions when the inmate cannot be removed because no country will accept the inmate, and to include the phrase "or detainee" where technically appropriate. In those instances where the Attorney General has determined that the inmate or detainee cannot be removed from the United States because the designated country of removal will not accept the inmate or detainee's return, the inmate or detainee may be considered or may remain eligible for an FPI assignment. Under INS procedures, an inmate or detainee in these circumstances may at some point qualify for release in this country and may realize the intended benefit of an FPI assignment. Under internal agency procedures, INS is responsible for informing the Bureau when an inmate/detainee's designated country of removal will not accept his/her return.

Many of the commenters stated that the wages received from FPI work assignments were useful as a source of income to the inmate or to the inmate's family. Several commenters noted the rehabilitative nature of FPI work assignments. FPI work assignments are

necessarily limited in number, and the purpose of the proposed rulemaking is to allocate this resource prudently on the basis of correctional management needs rather than upon the varied financial needs of inmates.

Several commenters stated that it would be unjust to remove inmates already in an FPI assignment without cause. This rulemaking is intended to establish a generic cause for removal based upon the correctional management needs noted above. One commenter claimed that the amendment was an *ex post facto* law and therefore was unconstitutional. The Bureau notes that inmates have no entitlement to FPI assignments. The amendment is not intended to be punitive but, as noted above, is being made for correctional management reasons.

Three commenters recommended expedited processing of a deportation or removal hearing if remunerations from an FPI assignment were not available to inmates under a deportation or removal order. Expedited processing of a deportation or removal hearing is subject to regulation by the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR).

One commenter, while recognizing and agreeing with the need to remove deportable inmates from participating in a program designed to train and rehabilitate incarcerated felons in order to prepare them for release back into American society, recommended that an inmate already in an FPI assignment who is also under an order of deportation be removed no earlier than 90 days after the effective date of the rule change and that non-U.S. citizens would not be considered for FPI work assignments until after their INS hearings had taken place. These recommendations are intended to minimize disruption at institutions where a significant percentage of the inmate population is either under deportation orders or is awaiting INS hearings. In response, the Bureau agrees to delay compliance by the institution by up to 90 days after the effective date of the regulation. The Bureau believes that the commenter's second recommendation that non-U.S. citizens not be considered for FPI work assignments until after their INS hearings had taken place is unnecessarily presumptive. The existence of an order for deportation, exclusion, or removal is readily identifiable. Any anticipated benefit in work assignment efficiency which may result from the recommended change is outweighed by the correctional

management needs addressed by reliance upon the proposed criterion.

After due consideration of comments received, the Bureau is adopting the proposed rule as final with the change noted above as to orders of exclusion and exceptions. Members of the public may submit further comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

#### **Executive Order 12866**

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

#### **Executive Order 12612**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### **Regulatory Flexibility Act**

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons:

This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **Plain Language Instructions**

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514-6655.

#### **List of Subjects in 28 CFR Part 345**

Prisoners.  
**Kathleen Hawk Sawyer**,  
*Director, Bureau of Prisons, and  
Commissioner of Federal Prison Industries.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons and the Board of Directors, Federal Prison Industries in 28 CFR 0.96(o) and 0.99, part 345 in chapter III of 28 CFR is amended as set forth below.

#### **PART 345—FEDERAL PRISON INDUSTRIES (FPI) INMATE WORK PROGRAMS**

1. The authority citation for 28 CFR part 345 continues to read as follows:

**Authority:** 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

2. In § 345.11, paragraph (g) is added to read as follows:

#### **§ 354.11 Definitions.**

\* \* \* \* \*

(g) *Pretrial inmate*—The definition of pretrial inmate in 28 CFR 551.101(a) is applicable to this part.

3. In § 345.35, paragraph (a) is revised to read as follows:

#### **§ 345.35 Assignments to FPI.**

(a) An inmate or detainee may be considered for assignment with FPI unless the inmate is a pretrial inmate or is currently under an order of deportation, exclusion, or removal. However, an inmate or detainee who is currently under an order of deportation, exclusion, or removal may be

considered for assignment with FPI if the Attorney General has determined that the inmate or detainee cannot be removed from the United States because the designated country of removal will not accept his/her return. Any request by an inmate for consideration must be made through the unit team. FPI does not discriminate on the bases of race, color, religion, ethnic origin, age, or disability.

\* \* \* \* \*

4. In § 345.42, paragraph (d) is added to read as follows:

**§ 345.42 Inmate worker dismissal.**

\* \* \* \* \*

(d) Any inmate or detainee who is a pretrial inmate or who is currently under an order of deportation, exclusion, or removal shall be removed from any FPI work assignment and reassigned to a non-FPI work assignment for which the inmate is eligible. However, an inmate or detainee who is currently under an order of deportation, exclusion, or removal may be retained in the FPI assignment if the Attorney General has determined that the inmate or detainee cannot be removed from the United States because the designated country of removal will not accept his/her return.

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## DEPARTMENT OF JUSTICE

### Bureau of Prisons

#### 28 CFR Part 540

RIN 1120-AA69

[BOP-1073-F]

#### Correspondence: Return Address

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Final Rule.

**SUMMARY:** This rule modifies the Bureau of Prisons rule on Correspondence in order to ensure that return address information on an envelope used for outgoing inmate correspondence will be completely and consistently filled out by the inmate. This amendment is intended to provide for the continued secure and efficient operation of the institution.

**EFFECTIVE DATE:** July 15, 1999.

**ADDRESSES:** Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, D.C. 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel,

Bureau of Prisons, phone (202) 514-6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is amending its regulations on correspondence (28 CFR part 540, subpart B). A final rule on this subject was published October 1, 1985 (50 FR 40109) and was amended February 1, 1991 (56 FR 4159), December 18, 1995 (61 FR 65204).

Current provisions in § 540.12(d) state that an inmate shall ensure that each of the inmate's outgoing envelopes contains that inmate's name and register number, P.O. Box, city, state, and zip code. Section 540.11 repeats this information. Envelopes provided for inmate use may contain the name of the institution. In order to ensure consistency, the Bureau is revising § 540.12(d) to specify that return address information on envelopes provided by the institution is completely filled out by the inmate, and that the same return address information is included on any envelope used by the inmate which was not provided by the institution. Sections 540.11 and 540.21(b) are amended to include a reference to this requirement rather than a restatement of the requirement.

Because this amendment is administrative in nature, the Bureau finds good cause for making this amendment effective without notice of proposed rulemaking. Members of the public may submit comments concerning this rule by writing to the previously cited address. Comments received will be considered, but will receive no response in the **Federal Register**.

#### Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

#### Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### Plain Language Instructions

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### List of Subjects in 28 CFR Part 540

Prisoners.

**Kathleen Hawk Sawyer,**  
*Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(o), part 540 in subchapter C of 28 CFR, chapter V is amended as set forth below.